

# Lisbon moves huge power to Brussels

## *Summary*

- The main purpose of the Lisbon Treaty is to change the way the decisions are made in the most important decision making groups in the EU – the Council of Ministers and the European Council.
- The way this change would happen would be by using a different system for deciding laws in the various policy areas e.g. setting up businesses, deciding criminal offences, immigration, tourism.
- The areas that would change systems under Lisbon would move from what is called unanimous voting which is what is used in those areas now to qualified majority voting which is what Lisbon would introduce.
- Unanimous voting is a system where all countries must agree on the decisions being made and each country has an equal vote. If a unanimous voting system is used in a policy area, each country has the power to block laws being made at a EU level on that area that they see as harmful, this power is called a veto. Qualified majority voting is a system where, if the Lisbon treaty is passed, only 55% of the member states need agree to a proposal and those must together make up 65% of the EU's population. In this system countries lose their vetoes. Based on Ireland's population size we would have 0.8% of the total voting strength.
- The number of major areas of policy where we would lose our veto is over 30. It is accepted by both sides that under Lisbon the EU will have a role in almost every law being made for the countries in the EU (except in the area of defence). The details of these areas will be given in the *Full Explanation* below.
- The change in voting systems would see a shift in who makes the decisions:
  - (a) Under unanimous voting each country has to agree to the new laws that are being proposed. This means that the government elected in each country decides on what laws will be introduced for the people of that country. This allows the people to directly elect or un-elect the politicians who decide their laws.
  - (b) Under qualified majority voting – if Lisbon is ratified - only 55% of countries would have to agree to the laws being proposed and those countries would have to make up 65% of the EU's population. This means the government of each country would not be able to decide what laws are made for that country, they would get to vote on each proposal but they would have no control over the laws being made. This would mean the people of each country would not be able to elect or un-elect the people making the decisions as they would not be able to elect or un-elect the governments of the other countries. The result of this is that politicians would become less accountable for

the laws being made. It also means countries with small populations would have a much smaller voting strength compared to the countries with big populations.

- The move from unanimous voting to qualified majority voting means moving away from a full-agreement voting system, moving away from equality between the different EU countries and moving power from the parliaments in each country to the decision making groups in Brussels.
- The argument made by opponents of Lisbon against qualified majority voting is that the representatives making decisions must always be directly accountable for the laws they bring in and a voting system is needed in the European Community that considers all countries equally. A Europe of equal nations was a promise frequently given before when the Irish people were accepting the previous European treaties.
- Our politicians are hard to control at the present, keep them accountable to our elections and vote NO to Lisbon.

### Full Explanation

It is Article 205 of the Treaty on the Functioning of the European Union (TFEU) within the original Lisbon text that defines what a qualified majority vote means. It says:

*“A qualified majority shall be defined as at least 55% of the members of the Council representing the participating member states, comprising at least 65% of the population of these states.”*

The difference between qualified majority voting and the unanimous system in place at the moment in the areas that will change under Lisbon can be found in the Summary above. The purpose of this explanation is to detail the areas that move from Unanimous voting to Qualified Majority Voting (QMV) if Lisbon is ratified.

The information below is based on the European Commission’s white paper on the new cases of QMV brought in by the Lisbon Treaty. The link for the original list on the Commissions website can be found at the end. The terms *EU treaty* means the Treaty on European Union as amended by the Lisbon Treaty and *FEU treaty* means the Treaty on the Functioning of the European Union as amended by Lisbon (the FEU treaty is presently called the Treaty establishing the European Community but under Lisbon it’s name would change).

The areas listed below are what will apply to the European Union as a whole but countries such as Ireland, UK and Denmark amongst others have opt-outs on some of these areas.

#### **List of the existing legal bases moving from unanimity to qualified majority voting:**

- Initiatives of the High Representative of the Union for Foreign Affairs and Security Policy (EU Minister for Foreign Affairs) relating to the Common Foreign & Security Policy at the request of the European Council - Article 15b EU treaty
- Common Security and Defence Policy: statute, seat and operational rules of the Armaments Agency (European Defence Agency) - Article 28D (2) EU treaty
- Freedom of establishment, access to activities as self-employed persons, involving amendment of the principles laid down by law in at least one Member State - Article 47 (2) FEU treaty
- Administrative cooperation in the area of freedom, security and justice – Article 61G FEU treaty
- Border checks - Article 62 FEU treaty
- Asylum - Article 63 FEU treaty
- Immigration - Article 69a FEU treaty

- Incentive measures in the field of crime prevention - Article 69C FUE treaty
- Eurojust – structure, operation, field of action and tasks - Article 69D FEU treaty
- Non-operational police cooperation - Article 69F FEU treaty
- Europol – structure, operation, field of action and tasks - Article 69G FEU treaty
- "Derogations" in the field of transport (now absorbed by the common transport policy) - Article 71 (2) FEU treaty
- Amendment to certain provisions in the Statute of the European System of Central Banks - Article 107 (3) FEU treaty
- Measures in the field of culture - Article 151 FEU treaty
- Definition of the tasks and objectives of the Structural Funds and the Cohesion Fund - Article 161 FEU treaty
- Council Presidencies – decision of the European Council - Article 201b FEU Treaty
- Court of Justice – Establishment of specialised courts - Article 225a FEU treaty
- Court of Justice – Amendment to the provisions of the Statute, with the exception of the statute of judges and advocates general and the language regime – Article 245 FEU treaty
- Appointment of the members of the Executive Board of the ECB – decision of the European Council - Article 245b FEU treaty
- Mechanisms for control of the Commission's exercise of implementing powers (replacing *comitology*) - Article 249C FEU treaty

**Qualified majority voting accompanied by supplementary mechanisms :**

- Freedom of movement for workers, social security benefits - Article 42 FEU Treaty
- Judicial cooperation in criminal matters - Article 69A FEU treaty
- Approximation of criminal legislation, offences and sanctions, possibly enhanced cooperation - Article 69B FEU treaty

### **List of the new legal bases requiring qualified majority voting:**

- Election, by the European Council, of the President of the European Council – Article 9B (5) EU treaty
- Appointment by the European Council of the High Representative of the Union for Foreign Affairs and Security Policy - Article 9E (1) EU treaty
- Financial provisions in Common Foreign & Security Policy - procedures for setting up and financing the startup fund - Article 28 EU treaty
- Establishment of permanent structured cooperation in the area of defence – Article 28E EU treaty
- Admission of a Member State to the permanent structured cooperation arrangement in the area of defence - Article 28E EU treaty
- Suspension of a Member State from the permanent structured cooperation arrangement in the area of defence - Article 28E EU treaty
- Agreement for the withdrawal of a Member State - Article 49A EU treaty
- Principles and conditions for the functioning of services of general economic interest - Article 16 FEU treaty
- Measures to secure diplomatic and consular protection - Article 20 FEU treaty
- Citizens' initiative for the tabling of a European law - Article 21 FEU treaty FUE
- Arrangements for a mutual evaluation mechanism of the implementation of the Union policies in the area of freedom, security and justice - Article 61C FEU Treaty
- Intellectual property rights and centralised schemes - Article 97a FEU treaty
- Member States whose currency is the euro, common position and unified representation on the international scene - Article 115C FEU treaty
- Sport - Article 149 FEU treaty
- Space policy - Article 172a FEU treaty
- Energy – Article 176A FEU treaty
- Tourism - Article 176B FEU treaty
- Civil protection - Article 176C FEU treaty

- Administrative cooperation - Article 176D FEU treaty
- Urgent financial assistance to third countries - Article 188I FEU treaty
- Humanitarian aid - Article 188J FEU treaty
- Arrangements for the implementation by the Union of the solidarity clause in case of terrorist attack or natural disaster, where this decision has no defence implications - Article 188R (3) FEU treaty
- List of Council configurations - Article 201b FEU treaty
- Operating rules and appointment of the members of the panel set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice before their appointment - Article 224a FEU treaty
- Administration of the European Union - Article 254a FEU treaty
- Revision of the rules governing the nature and composition of the Committee of the Regions and the Economic and Social Committee - Article 256a FEU treaty
- Implementing measures for the system of own resources - Article 269 FEU treaty

### **Particular cases:**

In the three cases mentioned below, the current treaties provide for a super qualified majority. The Treaty of Lisbon provides for the “ordinary” qualified majority, i.e. that applicable to acts adopted on a proposal from the Commission (even though in this instance the act is adopted on a recommendation from the Commission).

- Infringement of the Broad Economic Policy Guidelines (BEPGs) or jeopardising of the functioning of economic and monetary union (EMU) - Article 99 FEU treaty
- Establishment of the existence of an economic deficit - Article 104 (6) FEU treaty
- Measures to tackle an excessive deficit - Article 104 (13) FEU treaty

The areas that change voting systems given above clearly show that a huge number of policy areas under the Lisbon Treaty would have decisions made by the governing bodies of the European Union rather than by agreement of the national parliaments.

However, the Lisbon Treaty also creates new procedures where other areas of decision making can be moved from the national parliaments to the bodies in Brussels. This would be done through what are called the “Passerelle” and “Flexibility” clauses.

The concept of the “Passerelle” clauses are that the European Council or the Council of Ministers can agree to change decision making in a particular policy area to QMV thus getting rid of the national vetoes of each country. This would remove the need for ratification of legislation in the changed policy areas in accordance with national constitutional requirements i.e. Irish referenda. This is confirmed on the Commission website. It says that with the “bridging” (passerelle) clauses:

*“ it will henceforth be possible to switch from special legislative procedures to the ordinary legislative procedure without passing through the IGC (Inter Governmental Conferences) mechanism requiring ratification by all Member States.”*

The “Passerelle” clauses can be found in the original Lisbon text in Articles 15B and 48 of the EU treaty and 65, 137, 175, 270A and 280H of the FEU treaty. The only area that is completely excluded from these clauses is the area of defence and military.

The other procedures created by the Lisbon Treaty that allow for decision making powers to be moved to the governing bodies of the EU are the “Flexibility” clauses. These clauses allow the Council of Ministers to give new powers to the EU that the Treaties have not already given them. This could be done if they decided that these new powers were needed to obtain the objectives of the EU set out in the Treaties. Like with the “Passerelle” clauses, the transfer of powers under the “Flexibility” clauses would not require ratification in accordance with national constitutional requirements. The areas excluded from being changed under these clauses are issues of foreign policy and the areas of deciding national policy that are excluded from harmonization in the Treaty. The “Flexibility” clauses can be found under Articles 18 and 308 of the FEU treaty.

The argument that member countries are safe from the clauses mentioned above because national governments would have to agree to moving power to the EU bodies is weak. The fact that the national governments have already agreed in Lisbon to moving from unanimous voting to QMV in over 50 areas of policy shows that they are in favour of centralizing power. By ratifying the “Passerelle” and Flexibility” clauses in Lisbon we will give the power to the governments to centralize almost all powers without having to refer to the people they represent. In the Summary it was stated that the main purpose of Lisbon is to change the voting systems to QMV. The governments of the EU believe in centralizing decision making so much that they are making the Irish people vote a second time on the Lisbon Treaty.

The purpose of this analysis is to show the huge powers that Lisbon moves and can allow to be moved in the future (without a referendum) to the governing bodies of the EU.

The main benefit for the leaders of the EU in moving these powers and changing voting systems is that it will allow them to act as a group with less accountability and limits for their actions. The main negative effect for the people of the EU is that by changing voting systems they'll lose even more power in holding their nationally elected representatives fully responsible for the governing of their countries and will individually be unable to vote the group responsible out of power.



### References

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